POSSIBLE ECONOMIC SANCTIONS AGAINST POLAND

1. Suspend Renewal of U.S./Polish GIFA (Governing International Fisheries Agreement)

Action Needed: State Department would refrain from opening GIFA negotiations with Poland.

Background: The GIFA between the U.S. and Poland expires on July 1, 1982. This framework agreement permits foreign countries desiring to fish in our coastal waters authority to apply for an allocation from surplus U.S. resources.

Effect: Effect not immediate because negotiations not scheduled to begin until spring.

Cost: None.

2. Cancel Participation in the Poznan Trade Fair

Action Needed: Commerce will cease recruiting for the event, inform GOP and Fair authorities of withdrawal from Fair and inform those companies already signed up of the cancellation.

Effect: Largely symbolic, because Fair doesn't occur until June and financial situation precludes any significant U.S. sales. But given importance GOP attaches to it and our history of sending a Member of Congress as the "Presidential Representative" would be strong political statement. Decision to cancel could not be reversed.

Cost: None yet to USG, since American exhibition space has not been contracted for.

3. Reduce Polish Commercial Presence in U.S. Through Reduction of Personnel and/or Suspension of Activity of the Commercial Office in New York.

Action Needed: State Department refuses issuance/renewal of visas; State Department notifies GOP of suspension of agreement for New York Office of Commercial Counselor.

Background: The only Polish commercial establishment in the U.S. is the Office of the Polish Commercial Counselor in New York which is staffed by the Commercial Counselor, several officers, and representatives of Polish Foreign Trade Organizations (export-import firms). The New York Commercial Office, like USTDC in Warsaw, is treated as part of Embassy.

Effect: Counselor, and some staff members as part of Embassy, could operate from Embassy in Washington. Representatives of Foreign Trade Organizations attached to that office required to return home. Polish commercial operations in U.S. affected to some degree, but not cut entirely since majority of Polish export operations conducted through corporations chartered in U.S. Presumably number of Polish nationals employed by these companies could be reduced by visa denial.

Cost: GOP could retaliate through similar restrictions on offices of U.S. companies in Warsaw (22) and the U.S. Trade Development Center in Warsaw. Assistance rendered to U.S. companies by the N.Y. Commercial Counselor's office, especially regarding payments due them, presumably cut.

4. Restrict Access of Polish Ships to U.S. Ports

Action Needed: Coast Guard denies Polish port access requests; State Department lengthens current 4-day period of advance request or notifies GOP of our intention to do so.

Effect: Would interfere with prompt loading of U.S.-sourced relief supplies or agricultural commodities to be transported on Polish bottoms, and unloading Polish exports. Would lessen competitiveness of Polish vessels in cross-trade.

Cost: To USG--None. American importers of Polish goods likely to be affected. GOP may retaliate toward U.S. vessels.

5. Suspend Terms of U.S.-Polish Textile Agreement.

Action Needed: USG gives written notice to GOP 90 days prior to the end of any Agreement Year (in this case, 1982) of intent to terminate.

Background: The U.S. has a 4-year bilateral textile and apparel restraint agreement with Poland that was negotiated in 1980 and expires at the end of 1984.

Effect: Polish textile exports to U.S. were valued at approximately $50 million in 1980, and Poland has consistently sought increases in its quotas.

Cost: Would enable Poland to ship unrestricted quantities of textiles to U.S. unless all imports from Poland were embargoed.

6. Indicate USG Will Seek Postponement of IMF Consideration of Poland's Application; Persuade Allies to Do Likewise.

Action Needed: USG Decision; Consultations with Allies

Effect: Would at minimum postpone date when Poland could look forward to financial assistance from this agency. Currently estimated that normal processing of its application would make Poland eligible only in 1983 for IMF facilities. However, would also postpone initiation of IMF enforced economic stabilization program.

Cost: No immediate monetary cost to USG. Longer-term, would postpone date when Polish debt and stabilization could be handled through multilateral body. Could result in withdrawal of Polish application.

7. Impose Export Controls, in order of severity:

a) Suspend the processing/acceptance of all license applications for the export of technology and products to Poland.

Effect: Initial step, retaining flexibility to move further should conditions warrant.

Cost: At present there are 81 cases pending to Poland with an aggregate export value of about $13.7 million. Least costly of options considered.

b) Impose a partial trade embargo on Poland on high technology commodities. Multilateral cooperation required.

Effect: Demonstrates increased concern.

Cost: Difficult to lift. Without multilateral support alternative sources will be available.

c) Impose selective denials and/or suspensions/revocations for specific industries. Seek Allied agreement on a "no exceptions" policy for Poland in COCOM.

Effect: Provides flexibility.

Cost: U.S. non-agricultural exports to Poland totalled $149 million in 1980 of which $53 million was machinery and transport equipment. Economic loss to affected U.S. suppliers and loss of reputation as reliable suppliers.

d) Suspend all applications and validated licenses for exports to Poland.

Effect: There are $13.7 million worth of license applications pending. Some portion of the $66.1 million worth of validated licenses issued since January 1980 may not yet have been shipped.

Cost: Economic loss to U.S. suppliers and potential contract obligations unfulfilled.

e) Impose total ban on U.S. exports to Poland, including agricultural products.

Effect: Stroing political statement. Would further undermine already weak Polish economy.

Cost: Loss of $700 million to $750 million in exports, of which 80 percent are agricultural commodities. These presumably are lost anyway without USG credits since Poland is broke. Suppliers and banks are currently providing little if any of the credits Poland requires for purchase of U.S. commodities. Would interrupt deliveries to and from joint U.S.-Polish production projects, such as that of International Harvester.

8. Withhold U.S. Surplus Fisheries Allocations to Poland.

Action Needed: State Department advises GOP that we will not act upon Polish allocation requests.

Background: Poland's fish allocations were 220,000 metric tons in 1981. Poland uses these catches for both domestic consumption and for sales for hard currency. 1982 allocations are in the process of being formulated. Allocations are made in several installments throughout the year. Poland has received a preliminary initial allocation for 1982 of 42,144 metric tons.

Effect: Would cause some economic hardship, both in keeping the population fed and in earning hard currency for Poland.

Cost: None to the USG, since the fisheries can be reallocated to other countries. U.S. fish processors, especially Mrs. Paul's Kitchen, likely to react strongly against denying Poland allocations, since Poles sell part of their catch to U.S. processors at attractive prices.

9. Embargo Imports from Poland

Action Needed: President invokes "International Emergency Economic Powers Act."

Effect: Would deprive Poland of hard-currency earnings. Imports from Poland totalled:

1979	$ 426.5 million
1980	$ 416.7 million
Jan-Sept. 1981	$ 302.3 million

GOP announced this week that exports of food products were being discontinued. Food products constituted about one-third of the above totals:

1979	$ 168 million
1980	$ 159 million
Jan-Sept. 1981	$ 101 million

Since many imports from Poland face stiff competition from other countries, some long term market loss to Poland could result.

Cost: U.S. importers with purchasing contracts could be liable for breach of contract,unless force majeur clauses are included in their contracts. Income/profit of smaller companies heavily reliant on imports of Polish products could presumably be seriously affected.

10. Suspend or Terminate MFN Tariff Treatment for Poland

Action Needed: The President lacks authority to suspend or terminate MFN for Poland. The authority by which his predecessors acted to grant MFN was revoked by the 1974 Trade Act, which made no provision for suspension/termination for countries already receiving MFN. Therefore, it appears that an act of Congress would be required.

Background: In 1951, Poland was denied MFN because it was determined to be Soviet dominated. In late 1960, however, the President used his discretionary authority (under the 1951 Trade Agreements Extension Act) to determine that Poland was no longer Soviet dominated. This discretionary authority was removed under the 1962 Trade Expansion Act (subsection 231(a)) but was subsequently restored in December 1963 by subsection 231(b) of the Act. In March 1964 the President determined under this subsection that MFN treatment for Poland should be continued. Because it already received MFN, Poland was not made subject to Sec. 402 of the 1974 Trade Act which currently governs the granting of MFN treatment to any non-market economy country.

Effect: Suspension or termination of MFN would severely hamper Poland's ability to export to the U.S. by raising tariff duties 40-50 percent on most exports. The loss of export earnings would further reduce Poland's debt service ability. Politically, denial of MFN would be a visible demonstration of USG disapproval. Depending on conditions contained in suspending legislation, regaining MFN could prove difficult for Poland.

Cost: Economic cost is minimal.

11. Hold Off Initiating Negotiations on Rescheduling of 1982 Debt; Insist on Poland's Being Current on All Principal and Interest Coming Due, Otherwise Move to Declare Default. Principal and Interest Due USG in 1982 Between $500 and $600 Million. Requires Multilateral Action of Creditor Governments for Effectiveness and Burden Sharing.

Action Needed: USG decision. Consultation and agreement of other creditor governments.

Effect: Greatly increases hard-currency GOP must come up with and decreases GOP's ability to import necessary foodstuffs and industrial commodities. Most likely would cause Polish default on debts, resulting in invocation of cross-default clauses on all Polish loans, attempts to attach Polish property in West. Private banks likely to follow suit.

Cost: Polish default on debts most likely, resulting in loss to USG of at least $500 million.

12. Suspend USG Support for Food and Medicine Being Delivered Through Private Relief Agencies.

Action Needed: Presidential decision.

Effect:
-- Shows disapproval of GOP actions, but presumably affects those Poles most in need, e.g. the elderly, sick, children.
-- Weakens those Polish organizations, especially church, which are conduits of these commodities.

Cost: Could invite GOP retaliation against these relief agencies and cut off their future access. Would be used by GOP propoganda to portray U.S. as uncaring of plight of Polish people.

13. Continue Suspension on $100 Million Credit Facility for Purchase of Poultry Feed and Refuse to consider Any Further USG Food Credits.

Action Needed: Presidential decision.

Effect: Immediate economic effect is small. Impact would accelerate with time as poultry and meat production declines. Food shortage would ultimately be borne by Polish population.

Cost: $100 million of corn not disposed of, but USG financial exposure in Poland also not raised.

POSSIBLE ECONOMIC SANCTIONS
AGAINST THE U.S.S.R.

1. Fishing Sanctions: a) deny entry of Soviet processing ships into U.S. fisheries zones to participate in the existing fisheries joint venture with an American firm and b) notify Soviets of intention to terminate the 1976 U.S.-U.S.S.R. fisheries agreement.

Effect: Would eliminate Soviet access to U.S. fish and long-term commercial relations in fisheries.

Cost: There would be an increase in idle capacity in the distressed fishing industries in Washington/Oregon.

Action Needed: State to inform the Soviet Embassy about its intention to deny entry permits to Soviet processing ships into U.S. fisheries zones, notify the U.S. firm, give the Soviets written notification of our intentions to terminate the fisheries agreement.

2. Suspend Renegotiation of the Maritime Agreement and Renounce Intention to Negotiate New Grains Agreement. The U.S. agreed to resume sessions to renegotiate the Maritime Agreement, which expires at the end of 1981, and agreed in principle with the Soviets to negotiate a new Grains Agreement.

Effect: Cancelling these meetings has mostly symbolic value. Its immediate impact on the Soviets would be limited since the Agreeent would have expired in any case.

Cost: Under current circumstances the economic cost would be minimal. The Agreement provides for cargo sharing by U.S. ships. However, U.S. participation in the U.S.-Soviet grain trade is currently minimal, because it has been more profitable in the past four years for U.S. vessels to carry Alaskan oil.

Action Needed: DOT/State to notify Soviet Ministry of Merchant Marine.

3. Suspend Aeroflot Flights Into U.S. Soviet service for much of 1980/81 has been cut back as a result of union boycotts of Aeroflot in New York. Since there is no U.S. airline servicing Moscow, the remaining Soviet flights to the U.S. are essentially by U.S. sufferance.

Effect: This would be a practical step with symbolic value. It would hinder somewhat U.S.S.R. support for its Embassy and other establishments. However, any economic effect on the Soviets would be negligible. Soviet flights are currently down to two per month as a result of union action.

Cost: Since no U.S. carrier currently flies to Moscow, the cost to the U.S. would be minimal. The Soviets might deny permission for the U.S. Embassy support flight--a severe hardship for the U.S. Embassy personnel in Moscow.

Action Needed: State to notify Soviet Embassy and have CAB revoke Aeroflot permits. This can be done without abrogating the bilateral air transport agreement.

4. Unilaterally Suspend All Validated Licenses for the Export of Technology and Products to the USSR. Place all oil and gas equipment under national security controls. Begin discussions with our allies for tighter multilateral sanctions.

Effect: The President would retain flexibility to move to tougher sanctions depending on the outcome of the situation in Poland.

The USSR would receive a clear signal that they must continue their reform process and live up to their international obligations or face tougher action.

The Administration may attract considerable support in Western Europe for this action. (Note: Unlike Afghanistan, Poland is very much an European issue. The Socialist governments in France and the FRG would be under considerable public and trade union pressure to go along with U.S. initiatives if the situation in Poland deteriorates further.

Costs: Could be viewed as disasterous to business. Losses would be suffered by firms such as International Harvester.

Action Needed: Suspend all validated licenses.

5. Impose Selective Denials or Revocations of Validated Licenses for Specific Projects in Poland and/or USSR. Seek allied agreement and a "no exceptions" policy in COCOM for Poland. It would be preferable, although not essential, to have multilateral cooperation for this option.

Effect: The USSR would receive a strong and immediate demonstration of U.S. displeasure over its conduct in Poland.

Depending on the specific license denials, these sanctions could have some impact on the Soviet economy. For example, licenses for equipment for the USSR's domestic natural gas pipelines in Siberia could be revoked.

Cost: The sanctions would not be applied across the board, but would affect only particular companies. The U.S. would damage its reputation as a reliable supplier. For the sanctions to be effective we would need to immediately begin negotiations with foreign suppliers of similar equipment.

6. Impose a Partial Trade Embargo on the Soviet Union on High Technology Equipment. Multilateral cooperation required.

Effect: This demonstrates a greater level of concern than preceeding options. The sanctions would be more broadly applied and would have a significantly greater impact.

The embargo on high technology exports could be coordinated with the Allies at the upcoming COCOM meeting in January 1982.

Cost: Once the sanctions are announced they will be difficult to lift if the situation in Poland changes quickly. The USSR may be able to obtain sufficient grain from other sources. It may be difficult to reach multilateral agreement quickly.

7. Discourage American Firms from Participating in Major Non-Grain Transactions with the U.S.S.R., Even Those Not Subject to Validated Export License Requirements.

Effect: Soviet industries and/or specific projects would probably suffer little injury because the low level of U.S.-Soviet trade in manufactured products and most of the non-controlled products are readily available from non-U.S. suppliers.

Failure to provide spare parts for equipment already delivered would probably have the greatest impact on the Soviets. Currently, the major commodities affected would be pressure sensitive tape ($16 million) for wrapping pipeline, tracklaying tractors and parts ($84 million) for preparing pipeline right of way and open pit mining, petroleum coke ($21 million) for steel production, and pipelayers ($12 million). Among potential sales are major contracts for Caterpillar pipelayers and International Harvester combine technology.

Cost: U.S. non-agricultural sales to the U.S.S.R. would drop to an insignificant level. Firms and employees, some in depressed industries, would lose profits and jobs generated by the perhaps $300 million per year in exports. Unless other Western countries impose similar restrictions, U.S. firms would lose further ground to Western European and Japanese competition.

Action Needed: President or Secretary of Commerce to issue statement asking U.S. firms not to participate in such sales.

SECRET

8. Reimpose Partial Agricultural Embargo, Including Phosphates, Along Lines of Afghanistan Sanctions.

Effect: A U.S. embargo on grains above the 8 million tons guaranteed under the extended grains agreement and on other farm products for the livestock sector would have some impact on U.S.S.R. food production, as the U.S. remains a major supplier of feed grains, particularly corn. This would be less severe than the Afghanistan sanctions, because the Soviets have ordered only 2 million tons of grain above the guaranteed 8 million. Also, in view of the recently concluded long-term Soviet agricultural agreements with other suppliers (Canada, Australia, Argentina) the U.S.S.R. will be in a better position to obtain grain from non-U.S. sources in 1980. As regards soybeans the U.S.S.R. would be able to make up any shortfall from the U.S. through increased imports from other sources and of other oils as they did in 1980/81.

A stoppage of U.S. phosphate fertilizer exports would be cushioned by imports from other sources (including Morocco, Finland, Belgium) which the U.S.S.R. has lined up since the Afghanistan sanctions.

Costs: Under a partial agricultural embargo U.S. farm exports would be reduced by about $1 billion. Phosphate exports of $300-400 million would be lost. Lost grain exports might not be easily replaced by export sales elsewhere given the current world supply situation.

Action Needed: Place selected agricultural commodities and phosphates under validated license control and announce policy of non-issuance of licenses.

9. Reduction of Soviet Presence in the United States

Background: All Soviet economic establishments in the U.S. are subject to personnel ceilings. Currently the Soviets have 9 organizations with a combined personnel ceiling of about 75 U.S.S.R. nationals. The U.S. could remove all the personnel from one or more of the nine offices.

Effect: Would be a strong signal to the Soviets, U.S. allies and U.S. public that the U.S. is prepared to sacrifice commercial relations for an extended period.

Cost: The 28 U.S. companies with offices in Moscow could expect retaliation. Many of these 28 companies have invested hundreds of thousands of dollars in establishing their offices in Moscow. U.S. companies would, for the short to medium term, lose markets in the U.S.S.R. Would substantially cut commercial contacts.

Action Needed: State to inform the Soviet Embassy of the intended cuts and order the affected Soviets to leave the U.S. Could not dissolve those organizations incorporated under U.S. laws (including Amtorg, Belarus, Moram, and Sovfracht).

10. Suspend Operation of the U.S. Commercial Office in Moscow.

Background: Under the 1972 U.S.-U.S.S.R. Trade Agreement, the U.S. Government established a Commercial Office in Moscow and the U.S.S.R. Government established a Trade Representation in Washington. Even though the U.S.S.R. informed the U.S. that it would not bring into force the 1972 Trade Agreement under the terms of the 1974 Trade Act (i.e., the Jackson-Vanik Amendment), many parts of the Agreement not requiring Congressional approval--including Article 5--are being carried out.

Effect: Since the USCO is part of the U.S. Embassy in Moscow, attention must be paid to reciprocity. If the USG suspends use of operations in Moscow, this would create an imbalance that favors the Soviets--unless, the U.S.S.R. also took similar action with respect to its Trade Representation in Washington or the U.S. reduced the Soviet commercial presence.

Costs: Suspension of USCO activities would sharply cut commercial contacts and greatly reduce USG support for U.S. business activities. Because of difficult operating conditions in Moscow, this would be a loss to the U.S. business community. The USG would continue to incur expenses without providing the Government or the business community with any benefits. The effect on the U.S.S.R. would be largely symbolic. This action would be readily reversible, when circumstances permit.

Action Needed: Department of Commerce in conjunction with the Department of State can decide to suspend operation of the USCO.

11. Suspend Issuance of Visas for Soviet Commercial Visitors. Refuse Issuance of Future Applications for Such Visas. (No direct Commerce responsibility)

Effect: Would be an unmistakeable signal to the U.S.S.R. that the U.S. is prepared for a drastic cutback in commercial relations. Would reduce the opportunity for Soviets to use some of the commercial and scientific visitors for clandestine assignments.

Cost: Could result in Soviet non-payment for some contracts that require Soviet certification of product or training in the U.S. Would escalate restrictions of commercial contacts beyond those applied at the height of the Cold War. The Soviets could retaliate against U.S. commercial and scientific visitors to the U.S.S.R.

Action Needed: Visas to be revoked or denied by State Department.

12. Ask American Firms to Withdraw Representatives from the U.S.S.R.

Background: Twenty-eight U.S. firms are currently accredited by the U.S.S.R. and have a total of about 30 representatives in Moscow.

Effect: Would demonstrate to the Soviets U.S. business community's unwillingness to maintain commercial contacts with them.

Cost: U.S. firms would suffer loss of ability to pursue market opportunities, and be forced to write-off substantial long-term investment in the Soviet market.

Action Needed: Secretary of Commerce or other Commerce representative to call the 28 U.S. companies which have offices in Moscow and ask them to withdraw their personnel from the U.S.S.R.

13. Request that American Firms Not Participate in Soviet-Sponsored Trade Shows.

Effect: Along with the preceding measure, it would affirm the intention of the United States not to do business as usual.

Cost: Perhaps upward of a hundred American firms would miss an opportunity to show their products at the thirteen international trade exhibits scheduled in the Soviet Union in 1982 and forego the resulting market opportunities.

Action Needed: Secretary of Commerce to issue statement asking U.S. firms not to participate in Soviet trade fairs. Similar action was taken for U.S. boycott of Moscow Olympics and then made mandatory. The USG could effectively prevent participation by requiring a validated export license for all products exhibited in the U.S.S.R.

14. Close the U.S. Commercial Office in Moscow and the Soviet Trade Representation in Washington.

Effect: This would have strong symbolic significance, by signalling a virtual complete break in U.S.-U.S.S.R. commercial relations. We left the framework for commercial relations in place after Afghanistan.

Cost: Would virtually eliminate USG support for American business activities with he U.S.S.R.. It would be extremely difficult to reestablish commercial facilities in Moscow when circumstances might warrant.

15. Total Export Embargo (see Attachment I)

Effect: Strong symbolic impact. Except for grain the economic effect on Soviet economy would be minor. In 1981, U.S. non-agricultural exports were only about $600 million including $200 million of phosphate fertilizer.

Cost: Loss of $2-3 billion of grain exports which might be difficult to dispose of quickly elsewhere. U.S. funds would be needed to buy up existing contracts, pay for storage and for export efforts. Action would involve U.S. breach of (extended) U.S.-Soviet grains agreement and damage to U.S. farmers' long-term sales prospects in Eastern Europe. Several distressed U.S. companies would incur significant losses, i.e., Caterpillar, I.H.

Action Needed: Place all exports under validated license control and announce policy of non-issuance of liscenses.

16. Impose a total ban on U.S. exports with multilateral cooperation required.

Effect: The USSR's economy, already under severe strain, would probably be dealt a significant blow.

Soviet control over Eastern Europe would be seriously reduced as the USSR is forced to reduce its energy exports and financial support throughout the 1980's.

Cost: The U.S. may experience great difficulty in coordinating effective multilateral embargoes on high technology and grain.

Massive East European defaults on the debts owed to Western banks could damage Western financial institutions.

It would be difficult to limit the adverse effects of this option to the USSR alone. East Europe and probably Western Europe will also be seriously affected.

The U.S. and Europe would lose hundreds of thousands of jobs if their industries were denied access to Soviet Bloc markets.

18. Embargo on Imports of Soviets Products

American imports from the Soviet Union consist primarily of gold, non-ferrous metals, fuels, chemicals, and fur skins.

Effect: Since American imports from the U.S.S.R. were less than 1 percent of Soviet exports to IW countries, barring its products would not have any significant affect on the Soviet economy. In symbolic terms, this would be a drastic step. Imports of Soviet goods have never been embargoed across the board even at the height of the Cold War.

Cost: Although the Soviet Union is not the only source for the products listed above, an import embargo could force American users to buy from more expensive sources. In addition, an embargo could disrupt long-standing market ties that would be difficult to reestablish.

Action needed: The President would have to declare a national emergency under the International Emergency Economic Powers Act.

Attachment I

Since the beginning of January 1980 through the end of October 1981 validated export licenses approved for the USSR totaled $2.36 billion (936 cases). Agricultural commodity licenses alone were $2.09 billion (22 cases). Comparable numbers for Poland are $66.1 million approved licenses for 705 cases.

At present there are 378 cases pending to the USSR with an aggregate export value of about $170 million. For Poland the comparable numbers for pending cases are 81, worth $13.7 million.

Not all validated licenses result in exports.

SECRET

A. Legal Authority for Trade Controls

I. EXPORT ADMINISTRATION ACT (EAA)

(a) Foreign Policy and National Security Authority

The EAA grants broad authority to place export controls on U.S. goods and technology to the extent necessary for national security or foreign policy purposes. This authority is vested in the President and exercised by the Secretary of Commerce in consultation with the Secretary of Defense for national security controls and the Secretary of State for foreign policy controls.

1. National security controls may be authorized to prohibit or curtail "the export of goods and technology which would make siginificant contributions to the military potential of any other country... which would prove detrimental to the national security of the United States."

2. Foreign policy controls are authorized "to prohibit or curtail the exportation of any goods, technology, or other information... to the extent necessary to further significantly the foreign policy of the United States or to fulfill its declared international obligations."

(b) With one exception, total embargo is not authorized for foreign policy reasons.

The EAA does not provide authority for a total embargo. The Export Administration Amendments Act of 1981 (which will be signed by the President in the next few days) authorizes a total embargo "in the event of Soviet or Warsaw Pact military action against Poland."

(c) Current controls are limited to "U.S. origin" commodities.

The current system of export controls affects only "U.S. origin" commodities and data, i.e., those exported from the United States. In addition, DOC asserts jurisdiction over the reexport to third countries of such commodities and data, in certain cases the export of a foreign made end-product using U.S. parts and components, and, in certain cases, the foreign made product of U.S. origin technology. The basis of this control is to authority under the EAA to control goods and data "subject to the jurisdiction of the United States." There is authority in the EAA to control exports of foreign origin commodities by foreign subsidiaries of U.S. companies.

(d) Authority to control exports of "non-U.S. origin" goods or data exported by foreign subsidiaries of U.S. companies-extraterritoriality.

There is authority in the EAA for controlling foreign sales by U.S. subsidiaries abroad without regard to U.S. origin of the goods or technology. The EAA authorizes controls over exports by "persons subject to the jurisdiction of the United States." Such extraterritorial extension of jurisdiction is subject to diplomatic, practical and legal constraints.

Controls on sales by foreign subsidiaries of U.S. companies have been imposed in a number of cases in the past, such as the Cuban embargo. These were imposed by Treasury under the authority of the old Trading with the Enemy Act. The same jurisdictional reach is in the Internatioanl Emergency Economic Powers Act. Controls under the Export Administration Act have traditionally not extended to transactions by U.S. subsidiaries abroad involving foreign origin goods. A 1977 amendment to the EAA would permit the broader control of subsidiaries, but legislative history anticipated sparing use in light of international repercussions. The authority was used only once in connection with controls related to the Moscow Olympics.

In practice, the extraterritorial reach of the Treasury-administered controls, such as the Cuban embargo, has been cut back over the years in the face of foreign government protests and challenges. The more recent Iranian embargo regulations did not extend licensing to U.S. companies abroad. Recent legislation in several countries subjects U.S. subsidiaries within their borders to possible legal sanctions for action taken in compliance with extraterritorail demands. Although U.S. control of reexport of U.S. origin goods and technology by foreign firms (U.S. owned and otherwise) presents extraterritorial issues, it has involved relatively little controversy to date.

(e) Existing controls- Implementing Various options

DOC currently maintains national security controls on high technology commodities and most technical data exported to Poland and the USSR. Virtually all these commodities and related data are subject to COCOM controls (see below). DOC controls on data are broader than those of COCOM countries. DOC also maintains foreign policy controls on exports to the USSR of oil and gas exploration and production equipment and related technical data. It also maintains a control on diesel engine assembly lines for the Kama River plant. Items subject to these controls may not be exported or reexported without authorization from DOC. The options for dealing with items currently subject to controls are the following:

1. Outstanding licenses can be suspended or revoked. This action can affect all or selected commodities or data, exports to Poland or the USSR or selected entities in those destinations. It would likely have the effect of disrupting or terminating business transactions in mid-stream. The action would be implemented by a notice in the Federal Register announcing the effective date of the action amd requesting that all license authorizations be returned to DOC. Licenses were suspended after the invasion of Afghanistan and, subsequently, revoked or reinstated on a case-by-case basis. There is authority under the regulations to take this action.

2. DOC can stop processing applications for new licenses. The EAA requires licenses to be processed within specific time limits. If these time limits were to be exceeded, there would be an adequate basis to deny applications, or return them without action. The basis would be the situation in Poland and/or Soviet actions.

(f) COCOM- No Exceptions Policy-Allied Cooperation

Most commodities controlled on national security grounds and related technology require COCOM approval. COCOM consists of the countries in NATO, excluding Iceland, and Japan, who cooperate in multilaterally controlling exports to most communist countries. COCOM relies on the voluntary cooperation of participating countries. Exports controlled by COCOM must receive unanimous consent in COCOM for the export to be permitted from any participatory country. Commodities at the lower end of the technology spectrum can be authorized at the discretion of individual countries ("national discretion" cases). Others require the unanimous consent for an exception to the COCOM control. The United States has adopted a "no exceptions" policy with respect to the U.S.S.R., i.e., that it does not seek exceptions to the controls. One option being considered would be to extend the "no exceptions" policy with regard to Poland. (While we could request cooperation from our allies, we could block other countries exports in COCOM.)

(g) Imposing New National Security Controls

The concurrence of the Secretary of Defense is required for the imposition of new controls. Controls can be imposed provided the statutory standards is met and the Secretary of Commerce determines that the items proposed for control are not comparably available from foreign sources. If they are available, controls may be imposed only if the President (not delegated) determines that absence of controls would prove detrimental to the national security of the United States. Controls would be effected by publishing a notice in the Federal Register adding specific items to the Commodity Control List.

(h) Imposing New Foreign Policy Controls

Except for commodities and technology controlled by other agencies (e.g., military items on the "Munitions List", certain nuclear items). most other exports could be controlled (and thus sale denied) under the foreign policy control provions of the EAA. Medicines and medicinal equipment cannot be controlled under the authority of the EAA. Food will be subject to the Fenwick amendment contained in the Export Administration Amendments Act (soon to be signed by the President) which prohibits foreign policy controls if the Secretary of State determines that the controls would cause "measurable malnutrition", unless the President determines that "arrangements are insufficient to ensure that food will reach those most in need." Also, "it is the intent of Congress that the President not impose export controls under this (foreign policy) section on any goods or technology if he determines that the principal effect of the export of such goods or technology would be to help meet basic human needs."

2. In order to impose such controls, the President must:
   a. Consider six statutory "factors" as follows:

      (i) the probability that such controls will achieve the intended foreign policy purpose, in light of other factors, including the availability from other countries of the goods or technology proposed for such controls;

      (ii) the compatibility of the proposed controls with the foreign policy objectives of the United States, including the effort to counter international terrorism, and with overall United States policy toward the country which is the proposed object of the controls;

      (iii) the reaction of other countries to the imposition or expansion of such export controls by the United States;

      (iv) the likely effects of the proposed controls on the export performance of the United States, on the competitive position of the United States in the international economy, on the inyernational reputation of the United States as a supplier of goods and technology, and on individual United States companies and their employees and communities, including the effects of the controls on existing contracts;

      (v) the ability of the United States to enforce the proposed controls effectively: and

(vi) the foreign policy consequences of not imposing controls

(b) Determine that reasonable efforts have been made to achieve the purposes of the controls through negotiations or other means;

(c) Consult with Congress "in every possible instance"

(d) "Immediately" notify the Congress and include with such notification a report specifying the President's conclusions with respect to each of the above six "factors", as well as the nature and results of any alternative means attempted or the reasons for imposing control without attempting any such alternative means. (If the controls prohibit or curtail the sale of agricultural commodities, the Congress may, within 30 days of receipt of the report, adopt a concurrent resolution negating such controls):

(e) Determ,ine that adequate evidence has been presented demonstrating that the absence of such controls would prove detrimental to the foreign policy of the U.S. when placing controls on goods or technology <u>determined to be available</u> from sources outside the U.S. in significant quanitites and comparable in quality to those produced in the U.S.; and

(f) Take all feasible steps to initiate and conclude negotiations with appropriate foreign governments in order to secure their cooperation in controlling the export of goods or technology comparable to those items upon which the U.S. has imposed controls.

(g) In addition to the above, the Secretary of Commerce must consult with affected U.S. industries as considered appropriate by the Secretary. At a minimum, the subject of such consultations must include factors (i) and (iv) under II(b)1. above;

(3) When foreign policy controls are imposed on agricultural commodities, they are subject to Congressional override by concurrent resolution of the Congress within 30 legislative days of receipt of the President's required report.

<u>NOTE</u>: When controls are imposed on agricultural commodities for either <u>foreign policy</u> or <u>national security</u> reasons under the provisions of the new farm bill (to be signed by the President) producers must be compensated under certain circumstances. The Secretary of Agriculture is required to compensate producers for embargo-related losses by raising the loans for the commodities involved to 100 percent of parity or making payments to producers equal to the difference bewteen 100 percent of the parity price for the commodity and the avergae market price for the sixty days immediately following the imposition of the embargo.

Such remedies would be trigerred only in those instances when the suspension or restruction of the export of an agricultural commodity was: (1) imposed on less than an across-the-board basis; (2) initiated for national security or foreign policy reasons; and (3) involved a country, or area of the world whose purchases of the commodity in the year preceding the year in which the embargo was imposed, exceeded 3 percent of the toal U.S. export sales of the commodity for the same year.

II. International Emergency Economic Powers Act (IEEPA)

(a) Authority for a trade embargo

IEEPA authorizes the President to "investigate, regulate, direct, and compel, nullify, void, prevent or prohibit, any acquisitions, holdings, use, transfer...transportation, importation or exportation of or dealings in ... any property in which any foreign country or a national thereof has an interest." IEEPA 203(a)(1)(B). Thus the authorities are broad enough to enable the President to impose a total trade embargo and to react to most contingencies.

(b) Delegation of IEEPA Authority

There is no standing delegation of authority to any particular agency. During the Iran crisis the authority under the Act was delegated to Treasury, including export control authority. However, in this instance, it would be appropriate for the trade control authority to be delegated directly to DOC.

(c) In order to impose an embargo under this Act, the President must take the following steps:

1. Declare a national emergency to deal with an "unusual and extraordinary threat, which has its source in whole or in substantial part outside the United States, to the national security, foreign policy, or economy of the United States";

2. Issue an executive order specifying the controls to be imposed and delegating authority to implement them;

3. Consult, if at all possible, with the Congress before imposing the controls;

4. Consult regularly with the Congress as long as the controls are in place;

5. Report to the Congress immediately upon imposing controls. The report must contain the following information:

a) the circumstances which necessitate such exercise of authority;

b) why the President believes those circumstances constitute an unusual and extraordinary threat, which has it source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States;

c) the authorities to be exercised and the actions to be taken in the exercise of those authorities to deal with those circumstances;

d) why the President believes such actions are necessary to deal with those circumstances; and

e) any foreign countries with respect to which such actions are to be taken, and why such actions are to be taken with respect to those countries.

6. Provide follow-up reports to the Congress at least once every six months describing the actions taken since the last report and any changes which have occurred concerning information previously reported;

7. Maintain a file and index of all significant orders of the President. Each agency shall maintain a file and index of all rules and reguations taken to implement such orders.

8. Transmit to the Congress all significant orders and rules and regulations under means to assure confidentiality where appropriate;

9. Transmit to the Congress within 90 days after the end of each six month period after the declaration of national emergency a report on the total expenditures incurred by the U.S. Government during the six month period which are directly attributable to the imposition of controls;

10. Transmit to the Congress a final report on all such expenditures not later than 90 days after termination of the national emergency.

(d) Under the IEEPA, the President may not control:

1. any postal, telegraphic, telephone, or other personal communication not involving a transfer of anything of value; or

2. donation, by persons subject to the jurisdiction of the Unied States, of articles, such as food, clothing, and medicine intended to be used to relieve human suffering except to the extent that the President determines that such donations (A) would seriously impair his ability to deal with any national emergency declared under section 202 of this title, (B) are in response to coercion against the proposed recipient or donor, or (C) would endanger Armed

Forces of the United States which arew engaged in hostilities or are in a siruation where imminent involvement in hostilities is clearly indicated by the circumstances.

(e) National emergencies declared under the IEEPA can be terminated by a Congressional concurrent resolution.

ADDITION TO LEGAL AUTHORITIES ANNEX

B. Longshore Worker Boycotts

Government efforts to control and modulate economic pressures can be impaired by commercial boycott activities of workers or others. The U.S. has on occasion intervened in support of legal actions brought by the NLRB, shippers, or others affected private parties. When dock workers refused to load grain after the invasion of Afghanistan, the U.S. filed a formal statement of interest informing the court that the boycott would impair foreign policy interests by stopping shipments committed under the bilateral grain agreement and permitted under the newly imposed export controls. A Department o Commerce letter was filed to oppose a stoppage of in the loading of phosphates at the time the Department was considering the extension of export controls to this product.

The courts moved against the boycotts in some cases, but not all. The Supreme Court has before it a split of authority among the Federal Circuits as to whether these are illegal secondary boycotts or a form of constitutionally protected political expression. This legal uncertainty is not likely to deter suits against new boycotts and it need not affect a decision by the government to file a statement of interest in any such case.

The Government could petition courts to enjoin longshore worker boycotts or other commercial boycott activity if these threaten to interfere with government efforts to orchestrate a trade sanction response. The most likely approach would be to file a statement of government interest in proceedings brought by the NLRB or by affected commercial interests. (See Legal Authority Annex _____)

C. Congressional Endorsement

The stautes under which certain of the trade sanction options would be taken provide for the possibility of disapproval by Congressional resolution. To summarize

-Use of EAA to control export of any agricultural commodities for other than national security reasons; EAA sec. 7(f) provides for rescision by concurrent resolution within 30 days.

Controls imposed under IEEPA cn be rescinded by concurrent resolution at any time terminating the emergency. National Emergencies Act sec. 202.

Consideration can also be given to seeking a prompt Congressional endorsement by a resolution for support for sanctions taken under the foregoing authorities or through some form of special enabling legislation. such as legislation conferring authority to revoke or suspend MFN status.